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U. S. *Congress. House. Committee on agriculture.*
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74TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 421

COMMODITY EXCHANGE ACT

MARCH 18, 1935.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. JONES, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H. R. 6772]

The Committee on Agriculture, to whom was referred the bill (H. R. 6772) to amend the Grain Futures Act to prevent and remove obstructions and burdens upon interstate commerce in grains and commodities by regulating transactions therein on commodity futures exchanges, to limit or abolish speculative short selling, to curb manipulation, and for other purposes, having considered the same, report it back to the House without amendment, and recommend that the bill do pass.

GENERAL STATEMENT

This bill is an outgrowth of many years' experience in regulating the grain exchanges under the Grain Futures Act and the cotton exchanges under the Cotton Future Trading Act. Your committee has had extensive hearings on the subject during these years and has presented several bills to the House as a result of its deliberations.

This bill is substantially the same as H. R. 9623 of the Seventy-third Congress which was passed by the House, June 4, 1934, too late to receive final consideration by the Senate prior to the adjournment of the Seventy-third Congress. It also incorporates many of the principles and purposes contained in the bill H. R. 5367 introduced by Mr. Doxey, which is designed to regulate cotton exchanges.

The fundamental purpose of the measure is to insure fair practice and honest dealing on the commodity exchanges and to provide a measure of control over those forms of speculative activity which too often demoralize the markets to the injury of producers and consumers and the exchanges themselves. The bill has as another objective the restoration of the primary function of the exchanges which is to furnish a market for the commodities themselves. This type of

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legislation should have been passed many years ago; its enactment is essential to effect a permanent recovery.

The President, in his message to Congress February 9, 1934, stated:

> The exchanges in many parts of the country which deal in securities and commodities conduct, of course, a national business because their customers live in every part of the country. The managers of these exchanges have, it is true, often taken steps to correct certain obvious abuses. We must be certain that abuses are eliminated and to this end a broad policy of national regulation is required.
>
> It is my belief that exchanges for dealing in securities and commodities are necessary and of definite value to our commercial and agricultural life. Nevertheless, it should be our national policy to restrict, as far as possible, the use of these exchanges for purely speculative operations.
>
> I therefore recommend to the Congress the enactment of legislation providing for the regulation by the Federal Government of the operations of exchanges dealing in securities and commodities for the protection of investors, for the safeguarding of values, and, so far as it may be possible, for the elimination of unnecessary, unwise, and destructive speculation.

Again, in a letter to the Chairman of the House Committee on Interstate and Foreign Commerce, March 26, 1934, regarding proposed stock-exchange control, the President said:

> The people of this country are, in overwhelming majority, fully aware of the fact that unregulated speculation in securities and in commodities was one of the most important contributing factors in the artificial and unwarranted "boom" which had so much to do with the terrible conditions of the years following 1929.
>
> I have been definitely committed to definite regulation of exchanges which deal in securities and commodities. In my message I stated, "It should be our national policy to restrict, as far as possible, the use of these exchanges for purely speculative operations."

Since the passage of the Securities Exchange Act of 1934 there has been observed an increasing tendency on the part of professional speculators to transfer their activities from the security markets to the commodity markets, a tendency which makes the enactment of this bill without further delay of vital importance.

The break in cotton futures prices of nearly 200 points on the eleventh of this month, with no satisfactory explanation and no ready means by which any agency of the Government could ascertain the true facts, furnishes a recent demonstration of the need for regulation of the cotton futures exchanges as provided by this bill.

The theory underlying the Grain Futures Act of 1922 was that the grain exchanges would regulate themselves with Government assistance, and that failing in this respect, contract market designation would be withdrawn and future trading would be stopped. Those administering the act felt that, in many instances, the penalty of closing the market was too drastic and that to invoke it would injure more innocent persons than it could punish who were responsible for exchange conduct. The record of the hearings preceding the enactment of the Grain Futures Act clearly indicates that such act was intended to serve as a preliminary measure to give the exchanges a chance to demonstrate their ability at self-government and self-regulation and to provide experience and knowledge necessary for more specific control over exchange practices. Since 1925 every Secretary of Agriculture has recommended that the act be strengthened. This bill, therefore, merely does that which, based upon experience in administering the present law, should have been done long ago.

There is nothing in the bill which will interfere with any legitimate business or normal trading activity. It simply provides for

honesty in the conduct of what are important public markets. These affects vitally the interests of the people, whether they be producers or consumers of the commodities covered by the bill or whether they belong to that class of citizens who have a fondness, and perhaps some aptitude, for speculative investment in commodities and who like to test their judgment concerning values and price trends by occasional and moderate speculation therein.

While the Grain Futures Act of 1922 was designed to deal with futures trading in grains, it is common knowledge supported by evidence adduced at the hearings, that the same fundamental principles apply to futures trading in other commodities. The methods and technique of speculators are the same. Bookkeeping and accounting methods are the same and, though commission houses dealing in both commodities and securities make a sharp distinction between these two branches of the business they treat the commodities transactions of customers together, regardless of kind, and nearly always in the same account.

The bill authorizes the Commission created by the Grain Futures Act (consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General) to fix limitations upon purely speculative trades and commitments. Hedging transactions are expressly exempted. That this power of the Commission will be exercised judiciously and for the purpose merely of preventing overspeculation and a type of "racketeering" by a few large professional traders, may be assumed as a matter of course. As to those provisions of the bill which impose penalties for cheating and sharp practices there can be no objection except from those who desire freedom from all restraint in these matters.

CONSTITUTIONAL BASIS

Ample evidence has been presented before your committee during this and past sessions of Congress to demonstrate the close connection between the price and other aspects of marketing cash commodities in interstate commerce and futures operations on boards of trade and practices by traders and others in connection with such futures transactions. (See hearings before House Committee on Agriculture on H. R. 4545, H. R. 4661, H. R. 5883, H. R. 7007, H. R. 7235, and H. R. 7608 (72d Cong., 1st sess.), H. R. 8829 (73d Cong., 2d sess.), and the hearings held this session on H. R. 3009 which furnished the basis for the bill which is being reported.) That some of such operations and practices result in a burden on interstate commerce in the cash commodities themselves is a matter of common knowledge and the hearings referred to emphasize the fact.

Under the doctrine of *Board of Trade* v. *Olsen* (1923; 262 U. S. 1), which upheld the constitutionality of the Grain Futures Act, Congress has the power to regulate so as to remove the burdens and obstructions upon interstate commerce so caused, to foster interstate commerce by making it more certain that a true, fair, and stable price will be established in futures transactions, with the result that the prices of cash commodities in interstate commerce will more accurately reflect their value and artificial obstructions to the free movement of cash commodities in interstate commerce will not exist. That the

free movement of such commodities in interstate commerce is a matter of vital national concern is undoubted.

Your committee has been careful in the sections of the bill dealing with administrative proceedings to preserve for persons affected by its provisions the familiar rights of notice and hearing and the protection of judicial review of administrative action guaranteed by the Constitution. Further, it is believed that the standards for administrative action contained in the Grain Futures Act, as it now exists, and the standards inserted in the new provisions proposed to be added by the bill, are adequate to furnish definite and reasonable guides to administrative officers so that the proposed legislation will not suffer from the constitutional infirmity of invalid delegation of legislative power. Particular attention has been devoted in the bill to conforming to the principles announced by the Supreme Court in the Amazon and Panama Refining cases.

EXPLANATION OF THE BILL

Section 1 of the bill amends section 1 of the Grain Futures Act so that the short title of that act is changed to the "Commodity Exchange Act."

Section 2 makes the general clerical amendments to the Grain Futures Act which are required by the amendment to that act made by section 3 (a) of the bill. Section 3 (a) adds cotton, rice, mill feeds, butter, and eggs to the commodities subject to the provisions of the act and clarifies the act by substituting "flaxseed" for "flax" and "grain sorghums" for "sorghum."

Section 3 (b) amends section 2 (a) of the Grain Futures Act by adding definitions of new terms used in the Grain Futures Act as proposed to be amended by this bill. A "cooperative association of producers" is defined to mean a cooperetive association not less than 50 percent owned or controlled, directly or indirectly, by producers of agricultural products and otherwise complying with the Capper-Volstead Act, and to include any organization acting for a group of such associations and owned or controlled by them, and business done for the United States or any agency thereof is not to be considered either member or nonmember business for the purpose of determining compliance with the Capper-Volstead Act.

A "member of a contract market" is defined to include owners or holders of membership or membership representation on contract markets or holders of members' trading privileges on such markets. A "futures commission merchant" is defined to be one who solicits or accepts future delivery orders on contract markets and who accepts property (or extends credit) to margin or secure trades or contracts resulting from orders. A "floor broker" is defined to be one who executes, for others, orders on the market for pay. "The commission" is defined to be the Secretaries of Agriculture and Commerce and the Attorney General and the commission is given the name of the "Commodity Exchange Commission."

Section 4 of the bill is intended to clarify section 4 of the Grain Futures Act by striking therefrom an unnecessary exception. Section 4 of that act makes it unlawful to contract for grain for future delivery on or subject to the rules of any board of trade unless such board of trade has been designated as a contract market and such contract is

evidenced by a record in writing. The exception contained in paragraph (a) of section 4 which is stricken by the bill purports to except contracts where the seller is "the owner of the actual physical property covered thereby, or is the grower thereof, or in case either party to the contract is the owner or renter of land on which the same is to be grown", etc. The exception is confusing and is unnecessary for two reasons: (1) Section 4 of the act is limited expressly to contracts for the sale of grain "for future delivery on or subject to the rules of any board of trade in the United States", and (2) the term "future delivery" is defined in section 2 of the act so as "not to include any cash grain for deferred shipment or delivery."

Section 4a, the first of these new sections, has for its object the elimination of the obstruction on interstate commerce caused by undue speculation in futures on or subject to the rules of contract markets. The section gives the Commodity Exchange Commission the power, after due notice and opportunity for hearing and a finding of a burden on interstate commerce caused by such speculation, to fix and proclaim limits on futures trading which may be done on contract markets by any person during a business day and upon the net long and net short position of any person in futures trades. Transactions which are shown to be bona fide hedging transactions in a commodity by holders of that commodity or of products or by-products thereof, or by growers of that commodity, are exempt from the limits, and brokers and commission merchants are subject to the limits fixed only to the extent that they deal for their own account. The United States and its agencies are exempt from the limits authorized to be fixed.

Section 4b makes it unlawful for members of contract markets, and correspondents, agents, and employees thereof, in connection with orders to make or the making of contracts of sale of any commodity in interstate commerce to cheat, defraud, or deceive the customer, or to bucket the order. The section also prohibits such fraudulent practices in futures contracts in connection with orders made on or to be made on or subject to the rules of any contract market.

Section 4c makes unlawful any transaction which is, or is of the character of, or is known in the trade as, a "wash sale", "cross trade", "accommodation trade", or is a fictitious sale, or which is of the character of, or known in the trade as, a "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", and makes unlawful any transaction which is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price. The provision does not prevent the exchange of futures in connection with cash commodity transactions or of futures for cash commodities or transfer trades or office trades if made under board of trade rules not disapproved by the Secretary of Agriculture.

Neither section 4b nor section 4c has the effect, in providing for Federal regulation of the transactions prohibited by their terms, of preventing the application of State laws to the acts prohibited and the persons performing them. An express provision is inserted at the end of section 4c indicating that the intention of the law is not to occupy the field to the exclusion of the States.

Section 4d makes it unlawful for a person to engage as futures commission merchant in soliciting or accepting future delivery orders to be executed on a contract market unless such person is registered as such with the Secretary of Agriculture and his registration as not expired, or been suspended or revoked. The provisions relating to application for and granting of registrations are set forth in connection with the explanation of section 4f and section 8a.

Section 4d also requires such commission merchants to treat money, securities, and property received from customers to margin, guarantee, or secure the customers' trades as belonging to the customer. The section prohibits the use of such property to margin the trades of or to extend credit to any other person, but the commission merchant may deposit or pledge the property separately from or with the merchants' own deposits in a bank or trust company.

The merchant may also deposit or pledge with the clearing house organization or another member of a contract market such share of the customer's property as may be necessary to margin or secure the customer's trades carried with the clearing-house organization or with such member.

Section 4e prohibits any person from acting as floor broker in executing orders for futures contracts on contract markets unless such person is registered as such with the Secretary of Agriculture, and his registration has not expired or been suspended or revoked.

Section 4f (1) provides for the application for registration by futures commission merchants and floor brokers and requires them to continue to furnish information to the Secretary, and section 4f (2) requires such merchants to post copies of their registration certificates.

Section 4g provides for revocation of registration of futures commission merchants and floor brokers for failure to abide by the act or rules and regulations of the Secretary. Registration may also be revoked or suspended for failure to make reports required by the Secretary, failure to keep books and records regarding transactions in the form and manner prescribed by the Secretary, and for failure to keep the books and records open for inspection. The procedure for revocation is set forth in connection with the outline of amendments made by the bill to section 6 (b) of the Grain Futures Act.

Section 4h (1) prohibits operation of a place of business where orders for futures contracts are solicited or accepted unless such orders are to be executed by or through a member of a contract market. Paragraph (2) of the section prohibits misrepresentation by any person that he is a member of a contract market, or a registered futures commission merchant, or an agent of either, in connection with contracts for the purchase or sale of commodities in interstate commerce or for future delivery, or that the order is to be or has been executed on, or by or through a member of, a contract market.

Section 4i makes unlawful the making of a contract for future delivery, when the Secretary has required reports of amount of trading or long or short positions, in excess of such limits as are so fixed for reporting unless the person reports such transactions, and requires the keeping of books and their availability for inspection to secure compliance with such provisions.

Section 6 of the bill amends section 5 of the Grain Futures Act by inserting a new provision which authorizes designation of a board of trade as a contract market even though not located at a terminal

market if the board of trade provides for delivery of commodities at delivery points and upon terms and conditions approved by the Secretary. The amendment clarifies the present law to make certain that a board of trade may be designated a contract market even though only one of the commodities covered by the bill are traded in on the board. The amendment confirms the construction of the present law that the board of trade must provide both for the prevention of manipulation of prices and of the cornering of commodities.

Section 7 of the bill inserts a new section (sec. 5a) in the Grain Futures Act which requires boards of trade which have been designated as contract markets to (1) furnish the Secretary copies of their bylaws, rules, resolutions, etc., and changes therein, (2) allow inspection by representatives of the Departments of Agriculture and Justice of books, minutes, etc., of the board and its committees, and affiliates, and requires keeping such documents for 3 years or a longer period if the Secretary directs, and (3) when the Secretary directs it, to require warehouses to keep records and permit visitation and inspections and to retain records, etc.

Paragraph (4) of the new section requires contract markets, when directed by the Secretary, to provide for a period, after trading for delivery in a delivery month has ceased, during which futures contracts for delivery in that month may be satisfied by delivery of the actual commodity. This provision is designed to prevent market congestion near the end of a delivery month. It may be complied with either by cessation of trading prior to the end of the month or by permitting delivery after the delivery month has ended. The Secretary may order a market to establish such period only after notice and hearing and a finding that the order is necessary to prevent market congestion and "squeezes", and the period fixed by him is to be not less than 3 nor more than 10 business days.

Paragraph (5) requires contract markets to require the party making delivery under a futures contract to give the person accepting delivery written notice of delivery at least 3 business days prior to delivery. The Secretary can require longer notice (but not more than 10 business days) when he finds, after notice and hearing, that longer notice is necessary in order to prevent or diminish unfair practices in trading.

Paragraph (6) requires contract markets to require that all futures contracts in a commodity made on that market provide for delivery of grades of that commodity conforming to United States standards, if such standards have been officially promulgated.

Section 7 of the bill also inserts a new section (section 5b) which authorizes the suspension (for a period of not to exceed 6 months) or revocation of a contract market's designation as such for violation of the act or rules and regulations of the Secretary. The procedure for revocation is set forth in section 6 (a) of the Grain Futures Act.

Section 8 of the bill amends paragraph (b) of section 6 of the Grain Futures Act as follows: (1) To transfer to the Secretary of Agriculture certain power and authority now vested in a commission consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General. The Secretary of Agriculture, instead of the commission, is given power to deny trading privileges on contract markets to any person who, after hearing, is found to have violated any of the provisions of the act or any of the rules and regulations thereunder;

(2) to adapt the language of section 6 of the act to authorize suspension and revocation of registrations of futures commission merchants and floor brokers which by other sections of this bill are required to be registered by the Secretary of Agriculture; (3) to clarify the language of section 6 of the act in its application to manipulations of and attempts to manipulate the market price of any commodity; (4) to extend the reference to section 12 of the Interstate Commerce Act to include amendments of the Interstate Commerce Act and supplementary acts relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses in proceedings before the commission or before the Secretary of Agriculture as provided in section 6 of the act.

Section 9 of the bill inserts two new sections in the Grain Futures Act.

Paragraph (1) of the new section 6a prohibits contract markets from excluding legitimate cooperative associations from trading if the association complies with terms and conditions lawfully imposed on other members and on cooperative associations of producers engaged in the cash commodity business. With the consent of the Commission the board of trade can exclude such association, and provision is made for judicial review of the Commission's order. Section 6a (2) provides that no rule of a contract market shall forbid or be construed to forbid the payment of compensation on a commodity unit basis or otherwise, by any such cooperative association to its regional or local member associations for business received by such cooperative association provided no part of any such compensation other than amounts paid as dividends on capital stock is returned to producer patrons of such regional or local member associations otherwise than on a patronage basis and not more frequently than annually; nor shall the governing body of any board of trade designated as a contract market exclude from membership in, and all privileges on, such board of trade any duly authorized representative of any cooperative association, as herein defined which is otherwise qualified, because of the payment of such compensation.

Section 6b provides that for violation by a board of trade or its agents of the act, rules, or regulations of the Secretary, or orders of the Commission, the Commission may, in lieu of revoking the designation as a contract market, after hearing and subject to judicial review, issue a cease and desist order. Failure or refusal to obey the order when it becomes final subjects the offender to criminal penalties.

Section 10 of the bill inserts a new section in the Grain Futures Act (sec. 8a) under which the Secretary of Agriculture is authorized (1) to register futures commission merchants and floor brokers upon application made under rules and regulations; (2) to refuse to register any person whose registration has been revoked for violation of act or regulations; (3) to suspend or revoke the license of any futures commission merchant who accepts any order for purchase or sale of any commodity for future delivery on or subject to rules of any contract market from any person who has been denied trading privileges under section 6 (b); (4) to fix fees for issuance of registrations, renewals, and copies, not exceeding $10; (5) to make such rules and regulations as he deems necessary to carry out the purposes of the act; and (6) to publish the full facts concerning any transaction or market operation

which the Secretary deems disrupts or tends to disrupt any market or is otherwise harmful to the interests of producers and consumers.

Section 11 of the bill amends section 9 of the Grain Futures Act. The section adds to the sections of the act, violation of which is punishable by criminal penalties, the following new sections which are proposed to be inserted by the bill; Section 4a (relating to futures trading limits), section 4b (relating to fraudulent and deceptive practices), section 4c (relating to wash sales, etc.), and sections 4d, 4e, 4f, 4h, and 4i (relating to registrations of futures commission merchants and floor brokers, and duties imposed on them and other traders). The section also makes manipulation and cornering punishable and imposes criminal penalties upon persons who cause to be delivered false or misleading crop or market information.

Section 12 of the bill includes a special provision with respect to the separability of the various sections of the old Grain Futures Act and the new sections proposed to be inserted by this bill. The separability clause of the Grain Futures Act applies to the new amendments, of course, but the effect of section 12 is to permit the application of the section of the Grain Futures Act which is amended by this bill to be effective if the section of the bill which is amendatory of that section of the Grain Futures Act is held unconstitutional.

Section 12 also provides for disposition of matters pending under the old law in accordance with the provisions of the new bill.

Section 13 makes the proposed bill effective 90 days after the date of its enactment.

CHANGES IN EXISTING LAW

In compliance with paragraph 2a of rule XIII of the Rules of the House of Representatives, changes in the Grain Futures Act made by the bill are shown as follows: Existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman.

This Act [shall be known by the short title of "The Grain Futures] *may be cited as the "Commodity Exchange" Act."*

SEC. 2. (a) For the purposes of this Act "contract of sale" shall be held to include sales, agreements of sale, and agreements to sell. The word "person" shall be construed to import the plural or singular, and shall include individuals, associations, partnerships, corporations, and trusts. [The word "grain" shall be construed to mean wheat, corn, oats, barley, rye, flax, and sorghum.] *The word "commodity" shall mean wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, and eggs.* The term "future delivery," as used herein, shall not include any sale of [cash grain] *any cash commodity* for deferred shipment or delivery. The words "board of trade" shall be held to include and mean any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling [grain] *any commodity* or receiving the same for sale on consignment. The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation or trust, as well as of such official, agent, or other person. The words "interstate commerce" shall be construed to mean commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof, or within any Territory or possession, or the District of Columbia. *The words "cooperative association of producers" shall mean any cooperative association, corporate or otherwise, not less than 50 per centum owned or controlled, directly or indirectly, by producers of agricultural products and otherwise complying with an Act of Congress of February 18, 1922 (U. S.*

C., title 7, secs. 291 and 292), as now or hereafter amended, including any organization acting for a group of such associations and owned or controlled by such associations, provided that business done for the United States of America, or any agency thereof, shall not be considered either member or nonmember business in determining the compliance of any such association with said Act of Congress of February 18, 1922. The words "member of a contract market" shall mean and include individuals, associations, partnerships, corporations, and trust owning or holding membership in, or admitted to membership representation on, a contract market or given members' trading privileges thereon. The words "futures commission merchant" shall mean and include individuals, associations, partnerships, corporations, and trusts engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom. The words "floor broker" shall mean any person who, in or surrounding any "pit", "ring", "post", or other place provided by a contract market for the meeting of persons similarly engaged, shall engage in executing for others any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market, and who for such services receives or accepts any commission or other compensation. The words "the commission" shall mean the Commodity Exchange Commission consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General.

(b) For the purposes of this Act (but not in any wise limiting the foregoing definition of interstate commerce a transaction in respect to any article shall be considered to be in interstate commerce if such article is part of that current of commerce usual in the [grain] *commodity* trade whereby [grain] *commodities* and [grain] *commodity* products and byproducts thereof are sent from one State with the expectation that they will end their transit, after purchase, in another, including, in addition to cases within the above general description, all cases where purchase or sale is either for shipment to another State, or for manufacture within the State and the shipment outside the State of the products resulting from such manufacture. Articles normally in such current of commerce shall not be considered out of such commerce through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this Act. For the purpose of this paragraph the word "State" includes Territory, the District of Columbia, possession of the United States, and foreign nation.

SEC. 3. Transactions in [grain] *commodities* involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling [grain] *commodities* and the products and byproducts thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of [grain] *commodities* and the products and byproducts thereof and to facilitate the movements thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling [grain] *commodities* and the products and byproducts thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of [grain] *commodities* on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling [grain] *commodities* and products and byproducts thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in [grain] *commodities* and the products and byproducts thereof and render regulation imperative for the protection of such commerce and the national public interest therein.

SEC. 4. It shall be unlawful for any person to deliver for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication any offer to make or execute, or any confirmation of the execution of, or any quotation or report of the price of, any contract of sale of [grain] *any commodity* for future delivery on or subject to the rules of any board of trade in the United States, or for any person to make or execute such contract of sale, which is or may be used for (a) hedging any transaction in interstate commerce in [grain] *any commodity* or the products or byproducts thereof, or (b)

determining the price basis of any such transaction in interstate commerce, or (c) delivering [grain] *any commodity* sold, shipped, or received in interstate commerce for the fulfillment thereof, [except—]

[(a) Where the seller is at the time of the making of such contract the owner of the actual physical property covered thereby, or is the grower thereof, or in case either party to the contract is the owner or renter of land on which the same is to be grown, or is an association of such owners, or growers of grain, or of such owners, or renters of land; or]

[(b) Where] *except, in any of the foregoing cases, where* such contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a "contract market", as hereinafter provided, and if such contract is evidenced by a record in writing which shows the date, the parties to such contract and their addresses, the property covered and its price, and the terms of delivery: *Provided,* That each board member shall keep such record for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, which record shall at all times be open to the inspection of any representative of the United States Department of Agriculture or the United States Department of Justice.

SEC. 4a. (1) Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets, causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity. For the purpose of diminishing, eliminating, or preventing such burden, the commission shall, from time to time, after due notice and opportunity for hearing, by order, proclaim and fix such limits on the amount of trading under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market which may be done by any person as the commission finds is necessary to diminish, eliminate, or prevent such burden. Nothing in this section shall be construed to prohibit the commission from fixing different trading limits for different commodities, markets, futures, or delivery months, or different trading limits for buying and selling operations, or different limits for the purposes of subparagraphs (A) and (B) of this section, or from exempting transactions commonly known to the trade as "spreads" or "straddles" or from fixing trading limits applying to such transactions different from trading limits fixed for other transactions.

(2) The commission shall, in such order, fix a reasonable time (not to exceed ten days) after the order's promulgation; after which, and until such order is suspended, modified, or revoked, it shall be unlawful for any person—

(A) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of the contract market or markets to which the order applies, any amount of such commodity during any one business day in excess of any trading limit fixed for one business day by the commission in such order for or with respect to such commodity; or

(B) directly or indirectly to buy or sell, or agree to buy or sell, under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market, any amount of such commodity that shall result in giving such person a net long or net short position at any one time in or with respect to any such commodity in excess of any trading limit fixed by the commission for net long or net short position in such order for or with respect to such commodity.

(3) No order issued under paragraph (1) of this section shall apply to transactions which are shown to be bona fide hedging transactions. For the purposes of this paragraph, bona fide hedging transactions shall mean sales of any commodity for future delivery on or subject to the rules of any board of trade, to the extent that such sales are offset in quantity by the ownership or purchase of the same cash commodity or, conversely, purchases of any commodity for future delivery on or subject to the rules of any board of trade to the extent that such purchases are offset by sales of the same cash commodity. There shall be included in the amount of any commodity which may be hedged by any person—

(A) the amount of such commodity such person is raising, or in good faith intends or expects to raise, within the next twelve months, on land (in the United States or its Territories) which such person owns or leases;

(B) an amount of such commodity the sale of which for future delivery would be a reasonable hedge against the products or byproducts of such commodity owned or purchased by such person, or the purchase of which for future delivery would be a reasonable hedge against the sale of any product or byproduct of such commodity by such person.

(4) This section shall apply to a person that is registered as a futures commission merchant or as floor broker under authority of this Act only to the extent that transactions made by such person are made on behalf of or for the account or benefit of

such person. This section shall not apply to transactions made by, or on behalf of, or at the direction of, the United States, or a duly authorized agency thereof.

SEC. 4b. It shall be unlawful for any member of a contract market, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of (1) any contract of sale of any commodity in interstate commerce, or (2) any contract of sale of any commodity for future delivery made, or to be made, on or subject to the rules of any contract market for or on behalf of any person if such contract for future delivery is or may be used for (a) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (b) determining the price basis of any such transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

(A) to cheat or defraud or attempt to cheat or defraud such person;

(B) willfully to make or cause to be made to such person any false report or statement thereof, or willfully to enter or cause to be entered for such person any false record thereof;

(C) willfully to deceive or attempt to deceive such person by any means whatsoever in regard to any such order or contract or the disposition or execution of any such order or contract, or in regard to any act of agency performed with respect to such order or contract for such person; or

(D) to bucket such order, or to fill such order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of such person to become the buyer in respect to any selling order of such person, or become the seller in respect to any buying order of such person.

SEC. 4c. It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of, any transaction involving any commodity, which is or may be used for (1) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or (2) determining the price basis of any such transaction in interstate commerce in such commodity, or (3) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof—

(A) if such transaction is, is of the character of, or is commonly known to the trade as, a "wash sale", "cross trade", or "accommodation trade", or is a fictitious sale;

(B) if such transaction is, is of the character of, or is commonly known to the trade as, a "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty"; or

(C) if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

Nothing in this section shall be construed to prevent the exchange of futures in connection with cash commodity transactions or of futures for cash commodities, or of transfer trades or office trades if made in accordance with board of trade rules applying to such transactions and such rules shall not have been disapproved by the Secretary of Agriculture. Nothing in this section or section 4b shall be construed to impair any State law applicable to any transaction enumerated or described in such sections.

SEC. 4d. It shall be unlawful for any person to engage as futures commission merchant in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless—

(1) such person shall have registered, under this Act, with the Secretary of Agriculture as such futures commission merchant and such registration shall not have expired nor been suspended nor revoked; and

(2) such person shall, whether a member or nonmember of a contract market, treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person or accruing to such customer as the result of such trades or contracts as belonging to such customer. Such money, securities, and property shall not be used to margin or guarantee the trades or contracts, or to secure or extend the credit, of any customer or person other than the one for whom the same are held: Provided, however, That such money, securities, and property may be deposited or pledged separately and apart from, or commingled with, the deposits and pledges of such futures commission merchant with any bank or trust company and that such share thereof as shall be necessary to margin, guarantee, or secure the contracts or trades of such customer carried with the clearing-house organization of such contract market or with a member of such contract market, may be deposited or pledged with such clearing-house organization or with such member.

SEC. 4e. It shall be unlawful for any person to act as floor broker in executing any orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market unless such person shall have registered, under this Act, with the Secretary of Agriculture as such floor broker and such registration shall not have expired nor been suspended nor revoked.

SEC. 4f. (1) Any person desiring to register as futures commission merchant or as floor broker hereunder shall be registered upon application to the Secretary of Agriculture, which application shall be made in form and manner to be prescribed by the Secretary of Agriculture, giving such information and facts as the Secretary of Agriculture may deem necessary concerning the business in which the applicant is or will be engaged, including, in the case of applications of futures commission merchants, the names and addresses of the managers of all branch offices and of all correspondents and agents engaged in soliciting or accepting on behalf of such applicant any orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any board of trade, and including also the names of its officers and partners, if a partnership, and of its officers, directors, and stockholders, as the Secretary of Agriculture may direct, if a corporation. Such person, when registered hereunder, shall likewise continue to report and furnish to the Secretary of Agriculture the above-mentioned information and such other information pertaining to his business as the Secretary of Agriculture may require. All registrations shall expire on the 31st day of December of the year for which issued.

(2) Any person registered as futures commission merchant hereunder shall post in a conspicuous place in each of the offices maintained by such person in the United States in which orders for the purchase or sale of any commodity for future delivery are solicited or accepted, the original or duplicate copy (issued by the Secretary of Agriculture) of such person's registration certificate as such futures commission merchant.

SEC. 4g. If any person registered hereunder as futures commission merchant or floor broker shall violate any of the provisions of this Act, or any of the rules or regulations of the Secretary of Agriculture hereunder, or shall fail or refuse to make any report required by the Secretary of Agriculture regarding the transactions of such person, or the transactions of the customers thereof, in commodities for future delivery on any board of trade in the United States or elsewhere, or shall fail or refuse to keep the books and records pertaining to such transactions in the form and manner required by the Secretary of Agriculture, or shall fail or refuse to keep such books and records open to inspection by any representative of the United States Department of Agriculture or the United States Department of Justice, the registration of such person may be suspended or revoked after notice and hearing in accordance with the procedure and subject to the judicial review provided in paragraph (b) of section 6 of this Act.

SEC. 4h. It shall be unlawful for any person—

(1) to conduct any office or place of business anywhere in the United States or its territories for the purpose of soliciting or accepting any orders for the purchase or sale of any commodity for future delivery, or for making or offering to make any contracts for the purchase or sale of any commodity for future delivery, or for conducting any dealings in commodities for future delivery that are or may be used for

(A) hedging any transaction in interstate commerce in such commodity or the products or byproducts thereof, or

(B) determining the price basis of any such transaction in interstate commerce, or

(C) delivering any such commodity sold, shipped, or received in interstate commerce for the fulfillment thereof,

if such orders, contracts, or dealings are executed or consummated otherwise than by or through a member of a contract market; or

(2) falsely to represent such person to be a member of a contract market, or the representative or agent of such member, or to be a registered futures commission merchant registered under this Act, or the agent of such registered futures commission merchant, in soliciting or handling any order or contract for the purchase or sale of any commodity in interstate commerce or for future delivery or falsely to represent in connection with the handling of any such order or contract that the same is to be or has been executed on, or by or through any member of, any contract market.

SEC. 4i. It shall be unlawful for any person to make any contract for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market unless such person shall report or cause to be reported to the properly designated officer in accordance with the rules and regulations of the Secretary of Agriculture (1) whenever such person shall directly or indirectly make such contracts with respect to any commodity, or any futures of such commodity, during any one day in an amount

equal to or in excess of such amount as shall be fixed from time to time by the Secretary of Agriculture; and (2) whenever such person shall directly or indirectly have or obtain a long or short position in any commodity or in any future of such commodity, equal to or in excess of such amount as shall be fixed from time to time by the Secretary of Agriculture. Such person shall also keep books and records of transactions coming within the provisions of (1) and (2) hereof, which books and records shall show complete details concerning all such transactions, including the names and addresses of all persons having any interest therein, and shall be open at all times to inspection by any representative of the United States Department of Agriculture or the United States Department of Justice.

SEC. 5. The Secretary of Agriculture is hereby authorized and directed to designate any board of trade as a "contract market" when, and only when, such board of trade complies with and carries out the following conditions and requirements:

(a) When located at a terminal market where *any* cash [grain] *commodity* of the kind specified in the contracts of sale of [grain] *commodities* for future delivery to be executed on such board is sold in sufficient volumes and under such conditions as fairly to reflect the general value of the [grain] *commodity* and the differences in value between the various grades of such [grain] *commodity*, and where there is available to such board of trade official inspection service approved by the Secretary of Agriculture for the [purpose.] *purpose: Provided, That any board of trade not so located shall be designated as a "contract market" if such board of trade provides for the delivery of commodities on such contracts at a delivery point or points and upon terms and conditions approved by the Secretary of Agriculture.*

(b) When the governing board thereof provides for the making and filing by the board or any member thereof, as the Secretary of Agriculture may direct, of reports in accordance with the rules and regulations, and in such manner and form and at such times as may be prescribed by the Secretary of Agriculture, showing the details and terms of all transactions entered into by the board, or the members thereof, either in cash transactions consummated at, on, or in a board of trade, or transactions for future delivery, and when such governing board provides, in accordance with such rules and regulations, for the keeping of a record by the board or the members of the board of trade, as the Secretary of Agriculture may direct, showing the details and terms of all cash and future transactions entered into by them, consummated at, on, or in a board of trade, such record to be in permanent form, showing the parties to all such transactions, including the persons for whom made, any assignments or transfers thereof, with the parties thereto, and the manner in which said transactions are fulfilled, discharged, or terminated. Such record shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and shall at all times be open to the inspection of any representative of the United States Department of Agriculture or United States Department of Justice.

(c) When the governing board thereof provides for the prevention of dissemination by the board or any member thereof, of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of [grain] *any commodity* in interstate commerce.

(d) When the governing board thereof provides for the prevention of manipulation of prices [or] *and* the cornering of any [grain] *commodity* by the dealers or operators upon such board.

(e) When the governing board thereof does not exclude from membership in, and all privileges on, such board of trade, any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in any cash [grain] *commodity* business, if such association has complied, and agrees to comply, with such terms and conditions as are or may be imposed lawfully on other members of such board: *Provided*, That no rule of a contract market shall forbid or be construed to forbid the return on a patronage basis by such cooperative association to its bona fide members of moneys collected in excess of the expense of conducting the business of such association.

(f) When the governing board provides for making effective the final orders or decisions entered pursuant to the provisions of paragraph (b) of section 6 of this Act.

SEC. 5a. Each contract market shall—

(1) promptly furnish the Secretary of Agriculture copies of all bylaws, rules, regulations, and resolutions made or issued by it or by the governing board thereof or any committee, and of all changes and proposed changes therein;

(2) allow inspection at all times by any authorized representative of the United States Department of Agriculture or United States Department of Justice of the books, records, and all minutes and journals of proceedings of such contract market, its governing board and all committees, and of all subsidiaries and affiliates of such contract market, which books, records, minutes, and journals of proceedings shall be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct;

(3) when so directed by the Secretary of Agriculture, require the operators of warehouses in which or out of which any commodity is deliverable on any contract for future delivery made on or subject to the rules of such contract market, to make such reports, keep such records, and permit such warehouse visitation as the Secretary of Agriculture may prescribe. Such books and records shall be required to be kept for a period of three years from the date thereof, or for a longer period if the Secretary of Agriculture shall so direct, and such books, records, and warehouses shall be open at all times to inspection by any representative of the United States Department of Agriculture or United States Department of Justice;

(4) when so directed by order of the Secretary of Agriculture, provide for a period, after trading in contracts of sale of any commodity for future delivery in a delivery month has ceased, during which contracts of sale of such commodity for future delivery in such month may be satisfied by the delivery of the actual cash commodity. Whenever, after due notice and opportunity for hearing, the Secretary of Agriculture finds that provision for such a period of delivery for any one or more commodities or markets would prevent or tend to prevent "squeezes" and market congestion endangering price stability, he shall, by order, require such period of delivery (which shall be not less than three nor more than ten business days) applicable to such commodities and markets as he finds will prevent or tend to prevent such "squeezes" and market congestion;

(5) require the party making delivery of any commodity on any contract of sale of such commodity for future delivery to furnish the party obligated under the contract to accept delivery, written notice of the date of delivery, at least three business days prior to such date. Whenever, after due notice and opportunity for hearing, the Secretary of Agriculture finds that the giving of longer notice of delivery is necessary to prevent or diminish unfair practices in trading in any one or more commodities or markets, he shall by order require such longer notice of delivery (which shall be not more than ten business days) applicable to such commodities and markets as he finds will prevent or diminish such unfair practices; and

(6) require that all contracts of sale of any commodity for future delivery on such contract market shall provide for the delivery thereunder of commodities of grades conforming to United States standards, if such standards shall have been officially promulgated.

Sec. 5b. The failure or refusal of any board of trade to comply with any of the provisions of this Act, or any of the rules and regulations of the Secretary of Agriculture thereunder, shall be cause for suspending for a period not to exceed six months or revoking the designation of such board of trade as a "contract market" in accordance with the procedure and subject to the judicial review provided in paragraph (a) of section 6 of this Act.

SEC. 6. Any board of trade desiring to be designated a "contract market" shall make application to the Secretary of Agriculture for such designation and accompany the same with a showing that it complies with the above conditions, and with a sufficient assurance that it will continue to comply with the above requirements.

(a) A commission composed of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General is authorized to suspend for a period not to exceed six months or to revoke the designation of any board of trade as a "contract market" upon a showing that such board of trade has failed or is failing to comply with any of the above requirements or is not enforcing its rules of government made a condition of its designation as set forth in section 5. Such suspension or revocation shall only be after a notice to the officers of the board of trade affected and upon a hearing: *Provided*, That such suspension or revocation shall be final and conclusive unless within fifteen days after such suspension or revocation by the said commission such board of trade appeals to the circuit court of appeals for the circuit in which it has its principal place of business by filing with the clerk of such court a written petition praying that the order of the said commission be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such board of trade will pay the costs of the proceedings if the court so directs. The clerk of the court in which such a petition is filed shall

immediately cause a copy thereof to be delivered to the Secretary of Agriculture, chairman of said commission, or any member thereof, and the said commission shall forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the notice to the board of trade, a copy of the charges, the evidence, and the report and order. The testimony and evidence taken or submitted before the said commission duly certified and filed as aforesaid as a part of the record shall be considered by the court as the evidence in the case. The proceedings in such cases in the circuit court of appeals shall be made a preferred cause and shall be expedited in every way. Such a court may affirm or set aside the order of the said commission or may direct it to modify its order. No such order of the said commission shall be modified or set aside by the circuit court of appeals unless it is shown by the board of trade that the order is unsupported by the weight of the evidence or was issued without due notice and a reasonable opportunity having been afforded to such board of trade for a hearing, or infringes the Constitution of the United States, or is beyond the jurisdiction of said commission: *Provided further*, That if the Secretary of Agriculture shall refuse to designate as a contract market any board of trade that has made application therefor, then such board of trade may appeal from such refusal to the commission described therein, consisting of the Secretary of Agriculture, the Secretary of Commerce, and the Attorney General of the United States, with the right to appeal as provided for in other cases in this section, the decision on such appeal to be final and binding on all parties interested.

(b) If the Secretary of Agriculture has reason to believe that any person (*other than a contract market*) *is violating or has violated* [is violating] any of the provisions of this Act, [or is attempting to manipulate the market price of any grain in violation of the provisions of section 5 hereof,] or [of] any of the rules or regulations made pursuant to its requirements, *or has manipulated or is attempting to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any board of trade*, he may serve upon such person a complaint stating his [charge] *charges* in that respect, to which complaint shall be attached or contained therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made directing that all contract markets until further notice of the [said commission] *Secretary of Agriculture* refuse all trading privileges [thereon] to such [person.] *person, and to show cause why the registration of such person, if registered as futures commission merchant or as floor broker hereunder, should not be suspended or revoked.* Said hearing may be held in Washington, District of Columbia, or elsewhere, before the [said commission] *Secretary of Agriculture*, or before a referee designated by the Secretary of Agriculture, [who] *which referee* shall cause all evidence to be reduced to writing and forthwith transmit the same to the Secretary of Agriculture [as chairman of the said commission]. That for the purpose of securing effective enforcement of the provisions of this Act the provisions, including penalties, [of section 12] of the Interstate Commerce Act, as amended *and supplemented* (*U.S.C., title 49, secs. 12, 46, 47, and 48*), relating to the attendance and testimony of witnesses, the production of documentary evidence, and the immunity of witnesses, are made applicable to the power, jurisdiction, and authority of the Secretary of Agriculture, the said commission, [or] *and* said referee in proceedings under this Act, and to persons subject to its provisions. Upon evidence received, the [said commission] *Secretary of Agriculture* may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in [said order.] *the order, and, if such person is registered as futures commission merchant or as floor broker hereunder, may suspend, for a period not to exceed six months, or revoke, the registration of such person.* Notice of such order shall be sent forthwith by registered mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the [commission] *Secretary of Agriculture*, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States circuit court of appeals of the circuit in which the petitioner is doing business a written petition praying that the order of the [commission] *Secretary of Agriculture* be set aside. A copy of such petition shall be forthwith served upon the [commission] *Secretary of Agriculture* by delivering such copy to [its chairman or to any member thereof] *him*, and thereupon the [commission] *Secretary of Agriculture* shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received. Upon the filing of the transcript the court shall have jurisdiction to affirm, to set aside, or modify the order of the [commission] *Secretary of Agriculture*, and the findings of the [commission] *Secretary of Agriculture* as to the facts, if supported by the weight of evidence, shall in like manner be conclusive. In proceedings under paragraphs (a) and (b) the judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial [Code] *Code, as amended.*

SEC. 6a. (1) No board of trade which has been designated as a "contract market" shall exclude from membership in, and all privileges on, such board of trade, any association or corporation engaged in cash commodity business having adequate financial responsibility which is organized under the cooperative laws of any State, or which has been recognized as a cooperative association of producers by the United States Government or by any agency thereof, if such association or corporation complies and agrees to comply with such terms and conditions as are or may be imposed lawfully upon other members of such board, and as are or may be imposed lawfully upon a cooperative association of producers engaged in cash commodity business, unless such board of trade is authorized by the commission to exclude such association or corporation from membership and privileges after hearing held upon at least three days' notice subsequent to the filing of complaint by the board of trade. Such commission may prescribe that such association or corporation shall have and retain membership and privileges, with or without imposing conditions, or it may permit such board of trade immediately to bar such association or corporation from membership and privileges. Any order of said commission entered hereunder shall be reviewable by the circuit court of appeals for the circuit in which such association or corporation, or such board of trade, has its principal place of business, on written petition either of such association or corporation, or of such board of trade, under the procedure provided in paragraph (a) of section 6 of this Act, but such order shall not be stayed by the court pending review.

(2) No rule of any board of trade designated as a "contract market" shall forbid or be construed to forbid the payment of compensation, on a commodity unit basis or otherwise, by any such cooperative association to its regional or local member associations for business received by such cooperative association provided no part of any such compensation other than amounts paid as dividends on capital stock is returned to producer patrons of such regional or local member associations otherwise than on a patronage basis and not more frequently than annually; nor shall the governing body of any board of trade designated as a contract market exclude from membership in, and all privileges on, such board of trade, any duly authorized representative, of any cooperative association, as herein defined which is otherwise qualified, because of the payment of such compensation.

SEC. 6b. If any board of trade, or any director, officer, agent, or employee of any board of trade is violating or has violated any of the provisions of this Act or any of the rules or regulations of the Secretary of Agriculture thereunder, or any order issued by the commission pursuant to any provision of this Act, the commission, in lieu of revoking the designation of such board of trade as a "contract market" may, upon notice and hearing and subject to appeal as in other cases provided for in paragraph (a) of section 6 of this Act, make and enter an order directing that such board of trade, director, officer, agent, or employee shall cease and desist from such violation or violations, and if such board of trade, director, officer, agent, or employee, thereafter and after the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such board of trade, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $10,000 or imprisoned for not less than six months nor more than one year, or both. Each day during which such failure or refusal to obey such order continues shall be deemed a separate offense.

SEC. 7. Any board of trade that has been designated a contract market in the manner herein provided may have such designation vacated and set aside by giving notice in writing to the Secretary of Agriculture requesting that its designation as a contract market be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when the vacation of designation shall take effect. Upon receipt of such notice the Secretary of Agriculture shall forthwith order the vacation of the designation of such board of trade as a contract market, effective upon the day named in the notice, and shall forthwith send a copy of the notice and his order to all other contract markets. From and after the date upon which the vacation became effective the said board of trade can thereafter be designated again a contract market by making application to the Secretary of Agriculture in the manner herein provided for an original application.

SEC. 8. For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the Secretary of Agriculture may make such investigations as he may deem necessary to ascertain the facts regarding the operations of boards of trade, whether prior or subsequent to the enactment of this Act, and may publish from time to time, in his discretion, the result of such investigation and such statistical information gathered therefrom as he may deem of interest to the public, except data and information which would separately disclose the business transactions of any person and trade secrets or names of customers: *Provided*, That nothing in this section shall be construed to prohibit the Secretary of Agriculture from making or issuing such reports as he may deem necessary relative to the conduct of any board of trade or of the transactions of any person found guilty of violating the provisions of this Act under the proceedings prescribed in section 6 of this Act: *Provided further*, That the Secretary of Agriculture in any report may include the facts as to any actual transaction. The Secretary of Agriculture, upon his own initiative or in cooperation with existing governmental agencies, shall investigate marketing conditions of [grain] *commodities* and [grain] *commodity* products and byproducts, including supply and demand for these commodities, cost to the consumer, and handling and transportation charges. He shall likewise compile and furnish to producers, consumers, and distributors, by means of regular or special reports, or by such methods as he may deem most effective, information respecting the [grain] *commodity* markets, together with information on supply, demand, prices, and other conditions in this and other countries that affect the markets.

Sec. 8a. The Secretary of Agriculture is authorized—

(1) to register futures commission merchants and floor brokers upon application in accordance with rules and regulations and in form and manner to be prescribed by the Secretary of Agriculture; and

(2) to refuse to register any person if such person has violated any of the provisions of this Act or any of the rules or regulations promulgated by the Secretary of Agriculture hereunder for which the registration of such person has been suspended (and the period of such suspension shall not have expired) or has been revoked; and

(3) to suspend or revoke the registration of any futures commission merchant who shall knowingly accept any order for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market from any person if such person has been denied trading privileges on any contract market by order of the Secretary of Agriculture under the provisions of paragraph (b) of section 6 of this Act and the period of denial specified in such order shall not have expired; and

(4) to fix and establish from time to time fees and charges for registration and renewals thereof and for copies of registration certificates, not to exceed $10 for each such registration, renewal, or copy; and

(5) to make and promulgate such rules and regulations as, in the judgment of the Secretary of Agriculture, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act; and

(6) to communicate to the proper committee or officer of any contract market and to publish, notwithstanding the provisions of section 8 of this Act, the full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Secretary of Agriculutre disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers and consumers.

SEC. 9. Any person who shall violate the provisions of [section 4] *section 4, section 4a, section 4b, section 4c, section 4d, section 4e, section 4h, or section 4i* of this Act, *or who shall manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any board of trade, or who shall corner or attempt to corner any such commodity,* or who shall fail to evidence any contract mentioned in [said section] *section 4 of this Act* by a record in writing as therein required, or who shall knowingly or carelessly deliver *or cause to be delivered* for transmission through the mails or in interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of [grain] *any commodity* in interstate commerce, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution.

MINORITY VIEWS

By ruling announced by the chairman of the committee at the outset, the hearings on H. R. 3009 (the bill which furnished the basis for H. R. 6772) were confined to consideration of those porticns of the bill which propose to place all futures commission merchants and floor brokers under a license system to be administered by the Secretary of Agriculture. So far as floor brokers are concerned, these provisions were not in the bill which was before the committee last year, and there was no hearing with regard to them. So far as futures commission merchants are concerned, it seems clear from the recent hearings that the committee was not sufficiently aware of the implications and ramifications of the provisions when it gave its approval to a bill containing them.

Since the hearing the bill has been amended in certain respects, but not in any way material to the features hereinafter discussed. The word "registration" has been substituted for the word "license", but since a registration certificate is subject to exactly the same legal incidents and hazards, the change is one of shadow and not of substance. The provisions will be discussed for what they really are, i. e., the imposition of a far-reaching license system on the persons and the businesses subject to them.

Paragraphs (d) and (f) of section 4 of the bill make it unlawful for any person to engage as futures commission merchant or to act as floor broker without a license from the Secretary. The Secretary may refuse a license on the ground that an applicant has violated any provision of the act or any rule or regulation made by the Secretary for which his license has been revoked (sec. 8, a, 2). The Secretary may suspend or revoke a license for any one of a number of grounds, including violation of any provision of the act and violation of any rule or regulation of the Secretary (sec. 4, g, and sec. 8, a, 3). The procedure for suspension or revocation is substantially the same as that provided in the present Grain Futures Act of 1922 for the taking away of trading privileges from persons who violate that act—with one very important difference. Under the Grain Futures Act the Secretary (through a subordinate official) prosecutes a violator before a commission of three judges, the Attorney General, the Secretary of Agriculture, and the Secretary of Commerce. Under H. R. 6772, the Secretary prosecutes a violator before himself as judge for violations of a regulation which he himself has made, and as punishment may suspend or revoke the violator's license, with only a very narrow scope of review by the courts. In other words, the licensing provisions of H. R. 3009 are a complete combination of the executive, legislative, and judicial powers of Government.

There are a number of incidental provisions having to do with the powers proposed to be given the Secretary over licenses, which it is unnecessary to discuss in detail. In view of the life-and-death con-

trol given to the Secretary over the carrying on of the businesses licensed, it is important to note what regulation-making power is delegated to him. In addition to the broad powers delegated by various specific provisions of the act, paragraph (a) 5 of section 8, gives him blanket authority—

> to make and promulgate such rules and regulations as, in the judgment of the Secretary of Agriculture, are reasonably necessary to effectuate any of the provisions or to accomplish any of the provisions of this Act.

Note that there is no real intelligible standard or limitation in the foregoing to guide the Secretary or restrict his exercise of power. Note that there is no requirement that before making a regulation (which, because of hasty or ill-considered action, may completely clog the farmer's marketing machinery) the Secretary must give advance notice or hold any kind of a hearing before the regulation becomes effective. The power is so broad that the Secretary may change the law over night; what was legal today becomes a crime tomorrow, for which a man may be deprived for all time of his right to engage in a business to which he may have devoted his life and his fortune.

Testimony was heard at the hearing and not controverted showing that a very large number of individuals, firms, and corporations would be subject to the proposed licensing system, so that even the routine work of issuing and renewing licenses, and of recording and tabulating information will entail a substantial increase in personnel and expense in the Department of Agriculture. Patient attention to the testimony of the proponents of the bill failed to discover any evidence that there is any need for, or any evils that would be reached by, the proposed drastic change in the machinery for reaching violators, while the evidence given by those opposing the licensing provisions was amply sufficient to raise serious doubts in the mind of the undersigned as to whether much more serious evils would not result. One of these evils is that the license system would undermine the discipline now exercised by the commodity exchanges through their business-conduct rules and committees, without providing a satisfactory substitute. This evil has already been so clearly pictured in the report of the committee on stock-exchange regulation to the Secretary of Commerce in January 1934 that it is unnecessary to do more than quote from that report.

The report contained the following:

> Your committee does not consider it desirable to require the licensing of individual brokers. There is a distinct danger that such a system would break down the controls already exercised by the stock exchanges through their business-conduct rules, which operate or can be made to operate with summary speed and effectiveness. If brokers were licensed, it would inevitably come to be thought that the proper method of disciplining a broker would be the revocation of his license by the governmental authority. An exchange might well hesitate to deny its privileges to a broker whose license was still in full force and effect. Inevitably, however, the process of revoking a license would be much less summary than the action of a business-conduct committee of the exchange. The proceeding would take place at Washington and not locally. To some extent it would have to follow more or less protracted forms of judicial procedure and would have to be subject to review in the courts. All these factors, while cutting the ground from under the effectiveness of the exchange's own disciplinary procedure, would substitute a procedure slower and less certain of accomplishing results. It seems distinctly better, in the opinion of your committee, to stimulate the exchange to further disciplinary activity by holding it to a high degree of accountability for the conduct of members.

The exchanges are already under what is tantamount to a license system (under the Grain Futures Act of 1933 and continued and elaborated in H. R. 6772) and can easily be held accountable and should be rigidly so held, for any laxness in discipline.

The limitation placed on the scope of the hearing prevented more than casual discussion of two or three other features of this bill which those familiar with the business earnestly insist are unworkable and susceptible of serious adverse consequences to the farmer. This was claimed not merely by persons speaking for what is sometimes called the "speculative element" but by persons speaking for cash grain houses and for exchanges other than the one in Chicago, whose interests are sufficiently close to those of the farmer that this committee is justified in paying heed to these warnings. The grain-marketing system of this country is a delicate mechanism, easily thrown out of adjustment. The undersigned believes that the committee would be well advised to appoint a subcommittee charged with the duty of an intensive study of the evils to be remedied and the preparation of a bill which, while remedying the evils, will not wreak havoc on this country's marketing of grain and will not lodge an unduly broad or arbitrary power in an executive official. There is no emergency since the grain exchanges are already subject to extensive regulation under the statute now in force.

Because of the doubts above indicated as to particular provisions of H. R. 6772, the undersigned feels that the bill should not be enacted into law in its present form.

HARRY P. BEAM.

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